



was well below his initial guidelines range of 360 months to Life, and also below the statutory minimum of twenty (20) years. The United States Attorney never made a Rule 35(b) motion thereafter, and Defendant claims that this failure was a breach of the oral promises that induced him to enter the plea agreement. Defendant now seeks specific enforcement of that agreement and a reduction of his sentence.

## II. Analysis

“[U]nless the government’s failure to file a substantial assistance motion is ‘based on an unconstitutional motive’ . . . or is ‘not rationally related to any legitimate Government end,’ district courts have no authority to review a prosecutor’s refusal to file a substantial assistance motion and grant a remedy.” United States v. Butler, 272 F.3d 683, 686 (4th Cir. 2001) (quoting Wade v. United States, 504 U.S. 181, 185-86 (1992)).

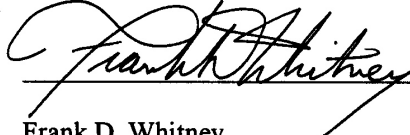
Here, Defendant has not made any allegations, let alone the “substantial showing” required, that would lead this Court to conclude that such an unconstitutional motive was at play. Wade, 504 U.S. at 186 (“additional but generalized allegations of improper motive” are insufficient). Moreover, Defendant has not shown that the Government’s declination to file a Rule 35(b) motion is not rationally related to a legitimate Government end. Indeed, Defendant admits he never testified in any trial on behalf of the Government.

Finally, Defendant received the benefit of the Government’s motion for downward departure pursuant to 5K1.1 at his sentencing, which provided a significant reduction in his sentencing guidelines range as a result of the substantial assistance he provided to the Government prior to his sentence hearing. Defendant’s general statements that he cooperated with the Government and that the Government verbally agreed to file a Rule 35 are insufficient to warrant relief under this record.

IT IS, THEREFORE, ORDERED that Defendant's motion (Doc. No. 276) is DENIED.

IT IS SO ORDERED.

Signed: September 16, 2008

  
Frank D. Whitney  
United States District Judge

